

§ 656.27

20 CFR Ch. V (4-1-02 Edition)

U.S. Department of Labor, Washington, DC 20210.

(d)-(h) [Reserved]

(i) If a labor certification has been ordered granted, the Certifying Officer shall grant the certification and shall follow the document transmittal procedures set forth at § 656.28.

[45 FR 83933, Dec. 19, 1980, as amended at 52 FR 11218, Apr. 8, 1987; 56 FR 54930, Oct. 23, 1991]

§ 656.27 Consideration by and decisions of the Board of Alien Labor Certification Appeals.

(a) *Designations.* In considering requests for review before it, the Board of Alien Labor Certification Appeals may sit in panels of three members. The Chief Administrative Law Judge may designate any Board of Alien Labor Certification Appeals member to submit proposed findings and recommendations to the Board of Alien Labor Certification Appeals or to any duly designated panel thereof to consider a particular case.

(b) *Briefs and Statements of Position.* In considering requests for review before it, the Board of Alien Labor Certification Appeals shall afford all parties 21 days to submit or decline to submit any appropriate Statement of Position or legal brief. The Department of Labor shall be represented solely by the Solicitor of Labor or the Solicitor's designated representative. In the cases involving college or university teachers and aliens represented to be of exceptional ability in the performing arts, if the employer has designated a person or organization to submit an *amicus curiae* brief, the Board of Alien Labor Certification Appeals shall afford *amicus curiae* 21 days to submit a brief. Briefs, statements, and *amicus curiae* briefs submitted pursuant to this paragraph (b) shall be deemed timely if either mailed or delivered to the Board of Alien Labor Certification Appeals on or before the end of the 21-day period set forth in this paragraph, and shall be consistent with the requirements of § 656.26(b)(4) of this part.

(c) *Review on the record.* The Board of Alien Labor Certification Appeals shall review the denial of labor certification on the basis of the record upon which the denial of labor certification was

made, the request for review, and any Statements of Position or legal briefs submitted and shall:

(1) Affirm the denial of the labor certification; or

(2) Direct the Certifying Officer to grant the certification; or

(3) Remand the matter to the Certifying Officer for further consideration or factfinding and determination; or

(4) Direct that a hearing on the case be held pursuant to paragraph (f) of this section.

(d) *Notifications of decisions.* The Board of Alien Labor Certification Appeals shall notify the employer, the alien, the Certifying Officer, and the Solicitor of Labor of the decision pursuant to paragraph (c) of this section, and shall return the record to the Certifying Officer unless the case has been set for hearing pursuant to paragraph (f) of this section.

(e) *Remanded cases.* If the case is remanded, the Certifying Officer shall do the additional factfinding or consideration in accordance with §§ 656.24 and 656.25 of this part, but such factfinding and consideration shall be limited to the issues for which the case has been remanded.

(f) *Hearings.* (1) *Notification of hearing.* If the case has been set for a hearing, the Board of Alien Labor Certification Appeals shall notify the employer, the alien, the Certifying Officer, and the Solicitor of Labor of the date, time, and place of the hearing, and that the hearing may be rescheduled upon written request and for good cause shown.

(2) *Hearing procedure.* (i) The "Rules of Practice and Procedure For Administrative Hearings Before the Office of Administrative Law Judges", set forth at 29 CFR part 18, shall apply to hearings pursuant to this paragraph (f).

(ii) For the purposes of this paragraph (f)(2), references in 29 CFR part 18 to: "administrative law judge" shall mean the Board of Alien Labor Certification Appeals member or the Board of Alien Labor Certification Appeals panel duly designated pursuant to § 656.27(a) of this part; "Office of Administrative Law Judges" shall mean the Board of Alien Labor Certification Appeals; and "Chief Administrative

Employment and Training Administration, Labor

§ 656.30

Law Judge'' shall mean the Chief Administrative Law Judge in that official's function of chairing the Board of Alien Labor Certification Appeals.

[52 FR 11218, Apr. 8, 1987]

§ 656.28 Document transmittal following the grant of a labor certification.

If a labor certification is granted, except for labor certifications for occupations on *Schedule A* (§ 656.10) and for employment as a shepherd pursuant to § 656.21a(b), the Certifying Officer shall send the certified application containing the official labor certification stamp, supporting documentation, and complete Final Determination form to the employer, or, if appropriate, to the employer's agent, indicating that the employer should file all the documents with the appropriate INS office.

[56 FR 54930, Oct. 23, 1991]

§ 656.29 Filing of a new application after the denial of a labor certification.

(a) A new application for labor certification by the same employer involving the same occupation may be filed at any time after the expiration of 6 months from the date of a denial of certification by the Certifying Officer, except that, if the certification was denied solely because the wage or salary offered was below the prevailing wage, the employer may reapply immediately pursuant to §§ 656.21, 656.21a, or 656.23, as appropriate.

(b) An alien who is denied a labor certification for a *Schedule A* occupation, except for employment as a physical therapist or as a professional nurse, may at any time have an employer file for a labor certification on the alien's behalf pursuant to § 656.21. Labor certifications for professional nurses and for physical therapists shall be considered only pursuant to §§ 656.10 and 656.22.

§ 656.30 Validity of and invalidation of labor certifications.

(a) Except as provided in paragraph (d) of this section, a labor certification is valid indefinitely. Labor certifications for Household Domestic Service Workers and teachers which were

granted under the previous regulations at 29 CFR part 60 and which lapsed after one year, shall be deemed automatically revalidated on the effective date of this part.

(b) (1) Labor certifications involving job offers shall be deemed validated as of the date of the local Employment Service office date-stamped the application; and

(2) Labor certifications for *Schedule A* occupations shall be deemed validated as of the date the applications were dated by the Immigration or Consular Officer.

(c) (1) A labor certification for a *Schedule A* occupation is valid only for the occupation set forth on the *Application for Alien Employment Certification* form, the alien for whom certification was granted, and throughout the United States unless the certification contains a geographic limitation.

(2) A labor certification involving a specific job offer is valid only for the particular job opportunity, the alien for whom certification was granted, and for the area of intended employment stated on the *Application for Alien Employment Certification* form.

(d) After issuance labor certifications are subject to invalidation by the INS or by a Consul of the Department of State upon a determination, made in accordance with those agencies, procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to a RA or to the Director, the RA or Director, as appropriate, shall notify in writing the INS or State Department, as appropriate. A copy of the notification shall be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

(e) Certifying Officers shall issue duplicate labor certifications only upon the written request of a Consular or Immigration Officer. Certifying Officers shall issue such duplicate certifications only to the Consular or Immigration Officer who submitted the written request. An alien, employer, or an employer or alien's agent, therefore,